IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 58 of 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AZAD ICE FACTORY - Appellant(s)
Versus
GUJ INDUSRIAL INVESTMENT CORPN - Defendant(s)

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Appearance :
MR ASHISH SHAH for Appellant
MR RD DAVE for Respondent

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 05/10/2006

ORAL JUDGMENT

1. The appellant-plaintiff M/s. Azad Ice Factory, a registered partnership firm had purchased certain property. M/s. Krishna Ice Factory from

whom the property was purchased, at the time of the purchase of the property even had informed the plaintiff that there were certain dues of Gujarat Industrial Investment Corporation, the plaintiff accordingly discharged the liabilities. It is the case of the plaintiff that from the letters of the defendant, it was clear that amount of Rs. 35,556.75 remained unpaid. According to them, all of a sudden, somewhere in the year 1984, they received a notice dated 10.3.84 from the defendant that the plaintiff was liable to pay sum of Rs. 3,63,481/-.

2. It appears that thereafter, the respondent submitted a certificate for recovery before the Collector/Recovery Officer under the provisions of the Gujarat Public Moneys [Recovery of Dues] Act, 1979 [hereafter referred to as the “Recovery Act”]. The Collector, exercising his powers under Section-3 of the Recovery Act issued an order of attachment and also issued certain notices to the plaintiff. The plaintiff, instead of appearing before the Collector, filed

the present Regular Civil Suit No. 129/86 in the court of the learned Joint Civil Judge[Junior Division]. The plaintiff submitted that the respondent-defendant had no authority to submit such certificate and in any case, the Collector had no jurisdiction to effect attachment. They prayed that a declaration be granted in favour of the plaintiff, that it be declared that the impugned order dated 25.12.85 attaching the plaintiff's machinery and implements was illegal, unconstitutional, contrary to the principles of natural justice and could not be maintained. They also prayed for permanent injunction against the defendant. The defendant appeared before the Court and submitted that the Collector had jurisdiction in accordance with law to issue attachment order, the order of attachment was legal and valid and that the suit was not maintainable in view of sub-section [4] of Section-3 of the Recovery Act. The plaintiff along with the suit had filed an application for grant of interim injunction, at the time of hearing of the application, objection relating

to maintainability of the suit was also considered by the Court. After considering the objections, the trial Court came to the conclusion that the Civil Court would have no jurisdiction to entertain such suit, it accordingly dismissed the suit by its judgment dated 4.10.86. The appellant, being aggrieved by the said judgment and decree, filed Regular Civil Appeal No. 43/86 which was heard and decided by the learned Assistant Judge at Porbandar, who, by his judgment dated 22nd September, 1987 dismissed the appeal. The plaintiff, being aggrieved by the said judgment and decree, has filed the present Second Appeal. The appeal has been admitted for hearing on 23.3.88 on the following substantial question of law:-

> "Whether the suit is barred under Sections 3 and 4 of the Gujarat Public Money Recovery Act?"

3. Mr. Ashish Shah, learned counsel for the

appellant submits that Section-3 of the Recovery Act confers jurisdiction upon a creditor to make an application with a certificate to the Collector for making recovery against the defaulter/debtor and the Collector, thereafter, would be entitled to make an inquiry and then can proceed to recover the amount. He submits that sub-section [4] of Section-3 simply says that no suit for the recovery of any such due as aforesaid [as referred to in sub-section [1] of Section-3] shall lie in a civil court against any person referred to in sub-section[1]. He also submits that the mandate of the law is that no injunction shall be granted by the Civil Court in respect of any action taken or intended to be taken in pursuance of the right conferred by Section-3. He submits that the law prohibits filing of the suit at the instance of a creditor, but does not prohibit a debtor or any third party to file a suit to challenge the proceedings before the Collector. He further submits that the jurisdiction of the Civil Court is curtailed only to the extent that it would

not be entitled to grant injunction. His further submission is that if the legislature consciously restricted jurisdiction of a Civil Court to some extent only, then, absolute bar of the jurisdiction cannot be read in the provisions of law.

4. Mr. R.D. Dave, learned counsel for the respondent-defendant submits that the intention of the legislature is that where a creditor is entitled to issue a certificate and submit the same before the Collector in relation to certain amounts well described in sub-section[1] of Section-3, and no suit at the instance of such creditor would be maintainable, then, sub-section[4] of Section-3 must be read to mean that no suit even at the instance of the debtor would be maintainable. His further submission is that the words “no injunction shall be granted by a Civil Court” must be read to mean that the Civil Court would not be entitled to entertain the suit even for declaration, therefore, this Court must hold that the suit for declaration and injunction at the instance of the plaintiff

would not be maintainable.

5. I have heard the parties at length. Recovery Act is an Act to provide for the speedy recovery of certain classes of dues payable to the State Government, the State Financial Corporation and other Government Companies and nationalized or other banks. Section-1 refers to short title, extent and commencement of the Act, while Section-2 refers to the definitions. Sub-section[1] of Section-3 provides that where any person is a party to any agreement relating to loan, advance or grant given to him or relating to credit in respect of, or relating to hire-purchase of goods sold to him by the State Government, the Corporation or, as the case may be, the Government Company by way of financial assistance, or, is a party to any similar nature of transaction with the bank or the Government Company as the case may be, under the State sponsored scheme or, to any agreement relating to guarantee given by the State Government or a Corporation in respect of a loan raised by industrial concern or to any agreement providing

that any money payable thereunder to the State Government or the Corporation shall be recoverable as arrears of land revenue and if such person makes any default in payment of the loan etc. or having become liable under the conditions of the grant to refund or any portion thereof, or otherwise fails to comply with the terms of the agreement, then, in case of the State Government Competent Officer and in case of the Corporation etc. Specified Officer by whatever name called and in case of a bank, the Local Agent thereof may send to the Collector, a certificate as early as possible in the prescribed form mentioning sum due from such person requesting that such sum may be recovered as if it were arrears of land revenue. After receiving such certificate, the Collector shall proceed to recover the aforesaid amount as arrears of land revenue, but he shall make an inquiry including giving hearing to the party affected. According to sub-section[3] of Section-3, on recovery of the amount, the sum shall be paid to the concerned creditor. Sub-

section[4] which is material for our purposes reads as under:-

> “No suit for the recovery of any such due as aforesaid shall lie in a civil court against any person referred to in sub-section [1], and no injunction shall be granted by a civil court in respect of any action taken or intended to be taken in pursuance of the right conferred by this section.”

6. Sub-section[4] of Section-3 is in two parts. The first part reads as under:- “No suit for the recovery of any such due as aforesaid shall lie in a civil court against any person referred to in sub-section [1]”. This part of sub-section[4] is severable from the second part. The first part would only mean that for recovery of such amount, a suit shall not be maintainable in a Civil Court and such suit shall not be entertained at the instance of the creditor. Such creditor would be obliged to observe the provisions of the Recovery Act and has to submit

a certificate before the Collector with a request that after making an inquiry and after giving due opportunity of hearing to the parties, the amount be recovered as land revenue. The first part of sub-section[4] of Section-3, in fact, runs in consonance with the objects and reasons of the Act which say that the Act is to provide for the speedy recovery of certain classes of dues payable to the State Government etc. The first part of sub-section[4] has noting to do with the rights of a debtor. A person who has committed defaults would not come within the first part, because, he had not approached the Collector with a request of recovery. A suit at the instance of the creditor only is barred under the first part of sub-section[4] of Section-3.

7. The second part of sub-section[4] reads and mandates that no injunction shall be granted by a Civil Court in respect of any action taken or intended to be taken in pursuance of the right conferred by this section [Section-3]. The second part does not show that no suit shall be

maintainable at the instance of a debtor in respect of any action taken or intended to be taken in pursuance of the rights conferred upon a creditor or the Collector by Section-3. Later part of sub-section[4] simply curtails jurisdiction of the Civil Court to the extent that it would not be entitled to grant injunction in respect of any action taken or intended to be taken in pursuance of the right conferred by Section-3.

8. The intention of the legislature was not to put an absolute ban on the rights of a debtor to approach to the Civil Court. The intention of the legislature, from the language employed in later part of sub-section[4] simply says that a Civil Court, even if it assumes jurisdiction and the suit is held to be maintainable, then too, such Civil Court would not be entitled to grant an injunction in favour of such plaintiff. The intention of the legislature behind using such language was that let debtor go to the Civil Court, have his litigation, enjoy luxury of the litigation, but he shall not be entitled to an

injunction. Because of non-grant of the injunction, the Collector, on the other hand, shall be entitled to proceed with the recovery which is the main object of the Act.

9. It was a common experience that against recovery proposed by the State Government, Corporation or the Government Companies, such suits were filed seeking declaration and injunction and the competent courts were too charitable in issuing ad-interim or interim injunction in favour of such plaintiffs. By this Act, the government wanted to put an end to such delaying tactics and wanted to provide speedy remedy to the creditors by saying that they were not required to go to Civil Court, contest litigation for years and only then get the fruits. The Act was brought into effect with pious and laudable object that the financial institutions, the Government, the Government Companies and the Corporations do not unnecessarily suffer delay but should have a forum where they may have a speedy recovery.

10. By issuing statutory mandate against a Civil

Court that it would not grant an injunction, the legislature was ensuring that even if a suit is entertained and is pending consideration, in absence of an order of injunction, the plaintiff [original debtor] may not enjoy the fruits of delay.

11. As sub-section[4] does not put a bar against the debtor in filing a suit in the civil court, I am unable to hold in favour of the defendant nor can I hold that the jurisdiction of the Civil Court is barred. However, I must hold that even if the plaintiff claims a relief of injunction of any nature or makes an application for grant of injunction during pendency of the suit, the Civil Court would have no jurisdiction to grant such injunction. If the plaintiff of such suit, instead of raising his objection under sub-section[2] of Section-3 of the Recovery Act, wants to enjoy luxury of the litigation, then, nobody can stop him, but he will have to face the danger of the attachment, auction of the property and recovery under the Act.

12. The two courts below were unnecessarily swayed

away by the fact that as the creditor cannot file the suit, then, it would be natural corollary that the debtor would also be not entitled to file the suit. The intention of the legislature, as already observed is that such creditor is not required to go to the Civil Court. It is also to be noted that Section-4 of the Recovery Act would not apply to the facts of the case.

13. In view of the discussion aforesaid, I must hold that the suit before the trial court was maintainable. If law permits such suit, then, it can certainly be entertained and decided on its own merits, but however, the Civil Court would have no jurisdiction to grant ad-interim, interim or final injunction of any nature. I also make it clear that during pendency of the suit, the Collector would be entitled to proceed with the matter and recover money in accordance with law and pay to, according to entitlement of the present defendant/original creditor.

14. The judgment and decree passed by the two courts below are set aside. The appeal is allowed. The

matter is remanded back to the trial court for its disposal in accordance with law. It is, however, made clear that the defendants would be entitled to raise question of maintainability of the suit under any other law. Let a decree be framed accordingly. Interim order is vacated with a word of caution to the learned trial courts below that they shall not be entitled to grant any interim injunction or final injunction in favour of the plaintiff.

[R.S. GARG, J.]

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